

MELVIN A. BROWN
DOUGLAS BICKERSTAFF

IBLA 80-610

Decided August 12, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring oil and gas lease M 35506 terminated for failure to pay annual rental timely.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements – Oil and Gas Leases: Termination

Where oil and gas lessees allege that they have entered into a communitization agreement associating the leased land with adjacent lands on which there is a producing well, but do not so show, and where the record shows that no such agreement was filed for approval with GS prior to the anniversary date of the lease in any event, the lease is not properly regarded as having been in "producing" status on the anniversary date, so that it terminates automatically by operation of law upon the lessees' failure to submit annual rental on or before this date.

APPEARANCES: Melvin A. Brown and Dougals Bickerstaff, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Effective December 1, 1976, the Montana State Office, Bureau of Land Management (BLM), issued competitive oil and gas lease M 35506 to Douglas Bickerstaff. This lease covered 42.08 acres of KGS lands in secs. 27 and 34, T. 36 N., R. 6 W., Montana principal meridian. Effective June 1, 1979, Bickerstaff assigned a 50-percent interest therein to Melvin A. Brown.

On September 24, 1979, BLM accepted a bond for drilling on the lease which the lessees had filed. Thereafter, the December 1, 1979, anniversary date passed without the lessees having paid annual rental on the lease. As the record showed that lessees had probably commenced drilling on the lease, and as no annual rental is due on leases of lands on which there is a well capable of production under 30 U.S.C. § 188(b) (1976), ^{1/} BLM, in January 1980, inquired of the Geological Survey (GS) whether lessees had completed a well on this lease. On March 11, 1980, GS reported that Falcon Petroleum had spudded a well on the lease on October 29, 1979, but that the well was abandoned on November 4, 1979, without having reached production.

Accordingly, on March 28, 1980, BLM issued a decision declaring that the lease had terminated automatically by operation of law on account of the failure to pay annual rental on or before December 1, 1979, the anniversary date of the lease, as there was no well on the lease capable of production in paying quantities on or before the rental due date. Also, BLM held that it was impossible to reinstate the lease, even though lessees had not petitioned for reinstatement, as the rental was not received within 20 days after the due date. Brown and Bickerstaff (appellants) appealed this decision.

[1] Appellants do not deny that they did not submit the annual rental on or before the anniversary date, but argue that they held the lease by production at that time pursuant to a communitization agreement, in that they were participating in producing gas well No. 3-27, situated on an adjacent Blackfeet tribal lease, I-5-IND-4907, in sec. 27. They state that they entered into this communitization agreement with the holders of all oil and gas rights in sec. 27 and have provided a copy of an agreement in which they apparently agreed not to drill on their lease, in return for a proportionate share of production from the well on the Blackfeet lease. ^{2/}

However, the document filed by appellants is merely a copy of an unsigned agreement, which is apparently only a proposal dating from December 1978. There is no indication that appellants actually consummated a communitization agreement based on this proposal. To the contrary, appellants' decision to proceed with drilling on the lease in September 1979 is a strong indication that no such agreement was reached.

^{1/} Under 30 U.S.C. § 188(b) (1976), as applied by Departmental regulation 43 CFR 3103.3-2(d), "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law."

^{2/} This agreement was apparently intended to accommodate the State of Montana's Board of Oil and Gas Conservation's delineation of sec. 27 as a "field" and its order barring the drilling of more than one well therein. Montana's Board took this action by Order 31-78, dated May 10, 1978.

Moreover, there is no indication that such an agreement, even if actually formed, was ever approved by GS or filed for approval. Again, appellants have filed only a blank form which the parties might have intended to file for approval with GS upon completion of the agreement. There is no date-stamp on this form, which has not been endorsed by GS officials. This is not surprising, as, by letter dated July 10, 1980, the Acting Deputy Conservation Manager, Oil and Gas, North Central Region, Geological Survey, Casper, Wyoming, advised that no agreement covering sec. 27 had been submitted to GS for approval.

Where a lessee fails to file a communitization agreement associating leased lands with a producing well on other lands for approval with GS prior to the anniversary date of the lease, and where GS does not formally approve such an agreement prior to this time, the lease is not properly regarded as having been in "producing" status on the anniversary date. 43 CFR 3105.2-1(a); C. J. Iverson, 21 IBLA 312, 323, 82 I.D. 386, 391 (1975); Harry D. Owen, 13 IBLA 33, 36 (1973); Kirkpatrick Oil and Gas Company, 8 IBLA 108, 110 (1972); see Kirkpatrick Oil Co., 32 IBLA 329 (1977), aff'd Kirkpatrick Oil & Gas Co. v. U.S., Civ. No. 77-1247-B (W.D. Okla. Nov. 26, 1979). Accordingly, as the lessees did not have a well capable of production either on or associated with their lease, they were not excused from paying annual rental on the lease on or before the anniversary date, and, upon their failure to do so, it terminated automatically by operation of law. 30 U.S.C. § 188(b) (1976); 43 CFR 3103.3-2(d); Harry Zaslowsky, 46 IBLA 217 (1980) and cases cited; C. J. Iverson, supra; Harry D. Owen, supra; Kirkpatrick Oil & Gas Co., 8 IBLA 108 (1972).

As appellants did not petition for reinstatement, such relief is now beyond the statutory authority of the Secretary to grant, as BLM correctly held. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c); Tenneco Oil Co., 46 IBLA 33 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

